IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

CHAMBER SUMMONS No. 1560 of 2005.
IN
SUIT No. 4125 of 1997

Jalil Mohamedali Mehdiyan **..Plaintiff.**

V/s.

Mohamedali Khalooi Tafti
& Ors. **..Defendants.**

And

Shahnaaz Hussain Ali
Khaleon & Ors. ..Respondents.

Mr. B.B. Colabawalla with Ms. Kunti Jhaveri
i/b. M/s. Bilawala & Co. for plaintiff.

Defendant No.6 present in person.

CORAM:S.C.DHARMADHIKARI,J.

DATED: 31st July, 2006.

P.C.:-

1] This Chamber Summons is moved by the plaintiff for the following reliefs;

(a) "That delay of over 3.5 years in respect of Defendant No.3 and delay of over 6.5 years in respect of defendant No.5, in

making this application be condoned and set aside the abatement, if any."

(b) "That this Hon'ble Court be pleased to allow the Plaintiff to carry out amendment to the plaint as per the Schedule annexed hereto."

2] Mr.Colabawalla appearing for the plaintiff, submits that the suit is filed for declaration that the partnership firm carrying on restaurant business in the name and style, more particularly, set out in the plaint, be dissolved from the date of filing of the Suit and such other directions and orders as are necessary for dissolution of the same, be passed.

3] In this Suit, according to him, number of parties have been named as Defendants. The present Chamber Summons is to bring on record the heirs and legal representatives of the deceased Defendant no. 3 and Defendant no.5. He submits that Defendant no.3 expired on 4th

April, 2002, whereas Defendant no.5 expired on 27th April,1999. He further submits that some of the heirs and legal representatives are already on record, in as much as, some of them have been impleaded as Defendants in their individual capacity. All that is required in law, is to amend the plaint and implead them alongwith Respondents as heirs and legal representatives of deceased defendant no.3 and defendant no.5. Therefore, the suit has not abated. He submits that in any event, delay, in such cases, is capable of being condoned. Even if there is no explanation for each days delay but the reasons are set out adequately then in such matters, liberal principles have to be applied and in that behalf he has relied upon decisions of the Supreme Court recorded in **A.I.R.2002 Supreme Court, 1201 (Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others) and A.I.R.2003 Supreme Court 4244 (Mithailal Dalsangar Singh and others Vs. Annabai Devram Kini and others)**

4] On the other hand, Defendant no. 6 who has appeared in person, has argued after

adopting the affidavit of defendant no.1 in reply to this Chamber Summons, that the Chamber Summons is not bona-fide. In his submission,the plaintiff was very well aware of the death of deceased Defendants. He submits that the explanation that the plaintiff became aware of the death very recently, is patently false. He wants to rely upon a Video Recording of the ceremony pursuant to the death of one of the defendant to demonstrate that the Plaintiff was present there at. He submits that for such false and misleading explanation, so also for not bringing to the notice of the Court the fact that the news of death was duly published in a news paper read by all concerned, appropriate proceedings for filing false affidavit be instituted/initiated against the plaintiff.

5] With the assistance of the learned counsel appearing for the plaintiff and the party appearing in person, I have perused the Chamber Summons, the affidavit in support and the replies thereto. I have also perused the prayer clause in the plaint. In my view, it is not denied that there is delay in moving

this Court. However, in all such cases, the Supreme Court has observed that parties should not be deprived of an adjudication on merits of the case. All procedural laws are meant for and ought to be utilized for rendering justice. In such circumstances, the delay in moving this Court is not fatal.

6] Once it is not disputed that some of the parties proposed to be added are already on record and all that is required to be done is to amend the cause title and carry out the consequential amendments to describe them as also others being sued as heirs and legal representatives, then the Delayu is liable to be condoned. It is pointed out to me that the Respondents to this Chamber Summons are the other heirs and legal representatives and they have to be added, so that the orders and directions that would be issued in the Suit, do not take away their right, title and interest in the properties. Similarly, it would avoid multiplicity of proceedings. Once the other heirs and legal representatives are already on record, then impleading other initial heirs and legal representatives after

delay is permissible, subject, of course, to the payment of costs to the aggrieved party. In my view, it is not necessary to direct dismissal of this Chamber Summons, once the above factual position is brought to my notice.

7] In the result, Chamber Summons is made absolute in terms of prayer clause (a) and (b) subject to the plaintiff paying costs quantified at Rs.3,000/- payable to defendant No.6.

8] Amendment to be carried out within two weeks from today. Copies of amended plaint to be served within four weeks thereafter. Additional Written statement to be filed within a period of twelve weeks from the date of receipt of amended plaint.

[S.C. DHARMADHIKARI,J]